IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6123 of 2001

with

SPECIAL CIVIL APPLICATION No 6124 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GEB

Versus

MOTIRAM SINGA GAMIT

Appearance:

1. Special Civil Application No. 6123 of 2001

MR MD PANDYA for Petitioner No. 1-2

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.M.D.Pandya, learned advocate appearing on behalf of the petitioner - Board and Mrs.Sangeeta Pahwa, learned advocate for respondents workmen. In both these petitions, the challenge aginst the award passed by the Industrial Tribunal, Surat in Complaint Nos.11/87 and 41/1987 in respect of [i] Shri Singa Harji Gamit and [ii] Shri Dhulji Chema Gamit. The tribunal has passed the award on 13th April, 2000 granting full backwages to the legal heirs and representatives of both complainants from the date of termination till the date they expired. Learned advocate Mr.M.D.Pandya appearing on behalf of the petitioner Board has raised contention challenging the legality and validity of award in question and raised various other contentions as raised against the challenge against very identical award involved in Special Civil Application No.5212 of 1999 and other allied matters of group. Today, this Court has also disposed of the above referred Special Civil Application No.5212 / 1999 and other allied matters of group wherein the challenge is against the identical award involved in these two petitions and therefore, this Court dealt with the very contentions raised by Mr.M.D.Pandya and hence, in view of this Court, there is no need to again refer and discuss such contentions in this order. Therefore, the contentions of Mr.Pandya, learned advocate for petitioner Board are already taken into consideration by this Court.

#. Learned advocate Mrs.Sangeeta Pahwa for respondents has submitted that during pendency of the proceedings before the Tribunal, the workmen petitioners herein whose services came to be terminated on 30th September, 1982, have expired in the year 1987 and therefore, the tribunal has rightly granted full backwages of the interim period as reinstatement in case of these two workmen is not possible since they expired. However, learned advocate Mr.M.D.Pandya for petitioner Board has submitted that there was some dispute about 240 actual working days of each workman and the tribunal has not properly appreciated this fact. But Mr.Pandya, learned advocate submits that looking to the peculiar facts and circumstances of the case, this Court may pass appropriate order considering overall totality of the facts and circumstances.

#. I have considered submissions made by the learned advocates for the parties and perused the award passed by the Tribunal in Complaint No.11/87 and 41/1987. It is noticed that the entire award is almost similar and identical passed by the Tribunal in other group matters, wherein this Court has passed orders today. The only question in these two petition which requires to be

considered that both the workmen have expired during pendency of proceedings before the Tribunal. Therefore, question is what amount the legal heirs and representatives are entitled from the petitioner Board towards backwages. It is also necessary to note one important aspect that there was prima facie some error committed by the tribunal while appreciating the evidence on record but since these two workmen have expires, the remedy to remand the matter back to the tribunal, will not served the purpose. Therefore, considering all these aspects of the matter, according to my opinion, there requires some modification in the award in question. Services of these two workmen came to be terminated on 30th September, 1982 and they approached the Industrial Tribunal under Section 33-A of the I.D.Act, 1947 by preferring Complaint Nos.11/87 and 41 / 1987. Thus, there was delay of five years on the part of the workmen to approach the tribunal in filing the complaint. Therefore, naturally since the industrial dispute raised or complaint is filed after period of five years, no such benefits for five years delayed period can be extended to the workmen because there was negligence on the part of the workmen not to approach the tribunal in time. Therefore, according to my opinion, the respondent workmen are not entitled to any amount of backwages from the date of termination till the date of filing of the complaint before the tribunal. Now the question is how much amount is entitled for interim period from the date of complaint till date of death of the workmen concerned. The complaint remained pending before the Tribunal for the period from 1987 to 2000, say about for 13 years but no fault of either side. The petitioner Board is Corporate Public Body and State Authority and the respondent workmen working as daily wager and not in permanent employment. Therefore, considering the entire facts and circumstances of the case, according to my opinion, if the full backwages awarded by the tribunal is reduced to 60 % of the interim period from 1987 to 2000, will meet the ends of justice between the parties. Therefore, the award in question passed by the Tribunal in Complaint No.11/1987 and 41/1987 dated 13th April, 2000 is modified in aforesaid terms accordingly.

#. Therefore, it is directed to the petitioner Board to pay 60 % backwages to the legal heirs and representatives of both these respondent workmen from the date of complaint filed before the Tribunal till date when these two workmen expired, on the basis of minimum time scale as ordered by this Court in respect of other workman involved in SCA No.5212 / 1999, within period of two months from the date of receiving a copy of this order.

#. However, it is made clear that this order is passed by this Court keeping in mind the fact that the workmen involved, have expired during pendency before the tribunal and therefore, this order passed by this Court may not be cited as precedent before any other authority of Court of law in any other matter.

Thus, these two petitions stand partly allowed accordingly. Awards in question stand modified accordingly. Ad-interim relief, if any, stands vacated. In both these petitions, Rule is made absolute to the extent indicated above. No order as to costs.

Direct Service to respondents is permitted.

Date : 9-5-2002 [H.K.Rathod, J.]

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